IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.S.RADHAKRISHNAN
&
THE HONOURABLE MR. JUSTICE A.K.BASHEER

WEDNESDAY, THE 10TH OCTOBER 2007 / 18TH ASWINA 1929

MFA.No. 880 of 2000(B)

OPMV.1029/1997 of MOTOR ACCIDENT CLAIMS TRIBUNAL, THRISSUR
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APPELLANT:
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1. JOSEPHINE ALIAS OPPINA.N.O., W/O.PAUL, RESIDING AT MADATHUMPADI HOUSE, CHEROOR P.O. THRISSUR DISTRICT.

2. GILBY PAUL (MINOR), d/O.PAUL, RESIDING AT MADATHUMPADI HOUSE, CHEROOR P.O., THRISSUR DISTRICT.

3. JIBIL PAUL (MINOR), D/O.PAUL, RESIDING DO.DO.DO.

(MINOR APPELLANTS 2 AND 3 ARE REPRESENTED BY THEIR GUARDIAN MOTHER THE FIRST APPELLANT)

4. DEVASSY, S/O. MADATHUMPADI THOMAS, RESIDING AT CHEROOR.P.O,. VILAVATTOM VILLAGE, THRISSUR DISTRCIT.

5. THRESSIA, W/O.DEVASSY, RESIDING AT CHEROOR.P.O. VILAVATTOM VILLAGE, THRISSUR DISTRICT.

BY ADV. SRI.V.CHITAMBARESH
SRI.T.C.SURESH MENON

RESPONDENTS:
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1. JOPBSON K. VARGHESE, S/O.VARGHESE, RESIDING AT KOLLANNUR HOUSE, PEGAMUKKU P.O. KATTAKAMBAL VILLAGE, THRISSUR DISTRICT.

2. JAMES, S/O.MATHEW, RESIDING AT KOLLANNUR HOUSE, ATHANI.P.O. MINALOOR VILLAGE, THRISUSR.

3. M/S.UNITED INDIA INSURANCE COMPANY LTD. CHALAKUDY.

BY ADV. SRI.M.S.PATTALI
SRI.T.VINOD KUMAR

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 10/10/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.S.Radhakrishnan & A.K. Basheer, JJ.

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MFA. No. 880 of 2000

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Dated this the 10th day of October, 2007.

J U D G M E N T

Radhakrishnan,J:

The appellants are the claimants. The accident is not disputed; so also the insurance coverage. The dispute is only against the reduction of the amount of compensation by the Tribunal stating that there was 25% contributory negligence on the part of the deceased. The Tribunal on facts and circumstances found that the claimants are entitled to Rs.3,20,040/- as compensation. But it further found that the deceased had consumed liquor and hence contributory negligence was attributed on the part of the deceased and the amount was reduced by one fourth and Rs.2,40,030/- was awarded as compensation.

2. It has come out in evidence that the bus in which the deceased was travelling did not have a door, as a result of which he was thrown off. We are of the view that if the bus was having a proper door, even assuming that the deceased had consumed liquor, he would not have been thrown out of the bus. Therefore the finding of the Tribunal that the deceased had contributed to the accident cannot be sustained.

3. In the circumstances we are inclined to set aside the order of the Tribunal that there was 25% contributory negligence on the part of the deceased. We held that the claimants are entitled to get 3,20,040/- with interest as awarded by the Tribunal.

Award is modified as above.

K.S.Radhakrishnan
Judge.

A.K. Basheer
Judge.

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